

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF GAS AND)	
ELECTRIC RATES OF LOUISVILLE)	CASE NO. 90-158
GAS AND ELECTRIC COMPANY)	

O R D E R

This matter arising upon petition of Louisville Gas and Electric Company ("LG&E") filed August 22, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of a benchmark study filed in response to a Commission data request on the grounds that the study contains information of a personal nature and that public disclosure would constitute an unwarranted invasion of personal privacy, and upon the additional grounds that disclosure of the information is likely to cause LG&E competitive injury; and for confidential protection of LG&E's federal and state income tax returns for the test year, including supporting schedules, filed in response to a Commission data request on the grounds that disclosure of the information is prohibited by federal and state law and upon the additional grounds that disclosure of the information is likely to cause competitive injury, and it appearing to this Commission as follows:

By Order of August 8, 1990, LG&E was directed to furnish certain information relevant to this proceeding. Item 7 of the Order requested "a copy of the benchmark study which indicated exempt employees needed an increase in salaries." Item 48 of the

Order requested "a copy of the federal and state income tax returns filed during the test year, including supporting schedules." As grounds for its petition to protect the information filed in response to these data requests as confidential, LG&E contends that the information contained in the benchmark study and the income tax returns would benefit its competitors and that disclosure of the information is likely to cause LG&E competitive injury. In addition, LG&E contends that the benchmark study contains information of a personal nature and that public disclosure would constitute an unwarranted invasion of personal privacy and that the income tax returns are protected from disclosure by state and federal statutes. The information sought to be protected is generally not known outside of LG&E and is not known within LG&E except to those employees who have a legitimate business need to know and act upon the information. LG&E takes appropriate measures to safeguard the secrecy of the information contained in the study and the tax returns.

Benchmark Study

The benchmark study contains job-specific analyses and comparisons and describes particularly by job title various positions at LG&E and the salaries paid for those positions. In some instances only one employee fills a particular position and, in those instances, the information would reveal the employee's salary. Where several employees fill a particular position, the information discloses the average salary paid to those employees as a group. LG&E contends that information of this nature is exempt from disclosure by KRS 61.878(1)(a).

KRS 61.878(1)(a) exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This provision is intended to protect as confidential information contained in public records that relates the details of an individual's private life when the individual's privacy interest in the information outweighs the public's interest in the information. Board of Education of Fayette County v. Lexington-Fayette Urban County Human Rights Commission, Ky. App., 625 S.W.2d 109, 111 (1981).

In this proceeding, LG&E is seeking Commission approval of an increase of its rates for electric service. If approved, such an increase will affect the numerous customers served by LG&E, some of whom may elect to intervene in this proceeding. Customers of LG&E therefore have an interest in seeing that the rates approved by the Commission are "fair, just and reasonable" as required by KRS 278.030(1). Since LG&E seeks to recover through its rate structure the salaries paid to its employees, customers of LG&E have a right to know whether those salaries are reasonable. The public's interest in the information, therefore, outweighs the privacy interest of the employees and the information is not entitled to protection under the exemption provided by KRS 61.878(1)(a).

LG&E also contends that disclosure of the information is likely to cause it competitive injury and is exempt from disclosure under KRS 61.878(1)(b). In support of its position, LG&E maintains that it must compete against other business

entities for the services of the individuals it employs. If their salaries are made public, LG&E maintains that other employers will be able to use the information to successfully bid for prospective employees and to lure away existing employees.

To qualify for the exemption provided by KRS 61.878(1)(b), it must be established that the information sought to be protected is not generally known and cannot be obtained from other sources. While compensation paid to a specific individual would not be available to the general public, as a general rule, average salaries or wages paid in a given industry are generally known by persons in those industries. Therefore, this same information from the benchmark study would have little competitive value and should not be protected.

Federal and State Income Tax Returns

LG&E seeks to protect as confidential its 1988 federal and state income tax returns, including supporting schedules, which it has filed in response to Item 48 of the data request. LG&E contends that these items are exempt by both federal and state law and that disclosure of the information is likely to cause LG&E competitive injury.

KRS 61.878(1)(j) exempts from the Kentucky Open Records Act "public records of information, the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly." Similarly, KRS 61.878(1)(i) exempts from the Act "all public records or information, the disclosure of which is prohibited by federal law or regulation." LG&E contends that its state income tax returns are prohibited

from disclosure by KRS 131.190(1) and (4) and that disclosure of its federal income tax returns is prohibited by 26 USCA, Section 6103(a).

KRS 131.190(1) provides in part as follows:

No present or former commissioner or employee of the department of revenue, member of a county board of assessment appeals, property valuation administrator or employee thereof, or any other person, shall divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. . . . (emphasis added)

In interpreting the statute, the Court in Tomlin v. Taylor, et al. 290 KY 619, 162 S.W.2d 210, 212 (1942), held that in enacting the statute "the legislature intended that tax schedules, returns or reports filed with the Department of Revenue should be treated and handled in a confidential manner." Thus, in enacting KRS 131.190(1) income tax returns filed with the state were deemed by the legislature to be confidential in nature and were protected from disclosure by KRS 61.878(1)(j).

In adopting 26 USCA, Section 6103, Congress has enacted legislation concerning federal income tax returns that is similar to the state's legislation concerning state income tax returns. Subsection (a) provides in pertinent part as follows:

Returns and return information shall be confidential, and except as authorized by this title. . . (2) no officer or employee of any state, any local child support enforcement agency, or any local agency administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information under this section, . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or

otherwise, or under the provisions of this section
. . . . (emphasis added)

This section protects the confidentiality of federal income tax returns by prohibiting their public disclosure by state officials. Therefore, the federal income tax returns are exempt from disclosure under KRS 61.878(1)(i).

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the benchmark study filed with the Commission in response to Item 7 of the August 8, 1990 Order revealing the compensation paid to individual employees, which LG&E has petitioned be withheld from public disclosure, be and is hereby denied.

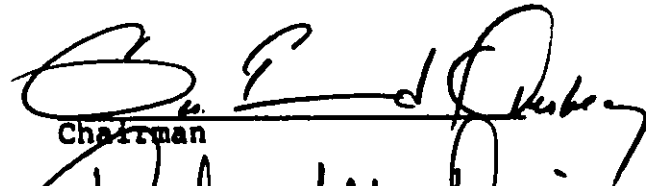
2. The benchmark study shall be held as confidential and proprietary for a period of 5 working days from the date of filing, at the expiration of which time it shall be placed in the public record.

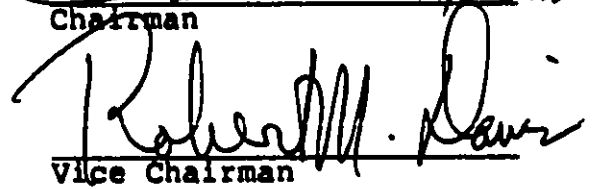
3. The 1988 federal income tax return and the 1988 Kentucky state income tax return and their supporting schedules, which LG&E has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

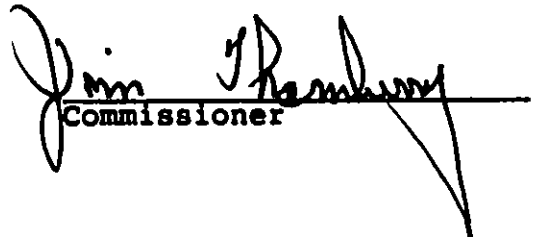
4. LG&E shall, within 10 days of the date of this Order, file edited copies of the income tax returns with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 29th day of October, 1990.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director